

FOR PUBLICATION

IN THE DISTRICT COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. THOMAS AND ST. JOHN

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	Criminal No. 2007-67
v.)	
)	
NIJEM JAMIL,)	
)	
Defendant.)	
_____)	

ATTORNEYS:

Ishmael A. Meyers, Jr., AUSA
St. Thomas, U.S.V.I.
For the plaintiff.

Francis E. Jackson, Jr., Esq.
St. Thomas, U.S.V.I.
For the defendant.

ORDER

GÓMEZ, C.J.

The Court held a hearing on the motion of the defendant, Nijem Jamil ("Jamil"), to suppress a firearm and ammunition found on his person and statements he made to law enforcement agents. The Court denied the motion as to the firearm, ammunition and certain statements Jamil made to law enforcement officers. The Court took the motion under advisement as to one statement in particular that Jamil made to law enforcement officers.

At the hearing on Jamil's motion, the government presented the testimony of a law enforcement officer who was present during

Jamil's arrest. That officer testified that he "grabbed" Jamil and "escorted him to the ground." The officer thereafter conducted a *Terry* pat-down and removed a firearm from Jamil's pocket. After the pat-down, the officer asked Jamil whether he had a license to possess the firearm. Jamil answered in the negative, following which the officer read Jamil his *Miranda* rights.

The Fifth Amendment provides that "[n]o person . . . shall be compelled in any criminal case to be a witness against himself." U.S. CONST. amend. V. The "inherently coercive" environment created by police custodial interrogation threatens the exercise of the Fifth Amendment privilege against self-incrimination. *New York v. Quarles*, 467 U.S. 649, 654 (1984).

When a defendant is subject to custodial interrogation by the police, procedural safeguards are necessary to preserve the defendant's Fifth Amendment privilege against compelled self-incrimination. *Miranda v. Arizona*, 384 U.S. 436, 479 (1966) (holding that absent procedural safeguards, there is an irrebuttable presumption of coercion when a defendant is interrogated while in police custody). Accordingly, the police may not interrogate a defendant unless they have first adequately advised him of his rights. *Id.* If the police interrogate a

defendant in custody without first giving sufficient warnings, the defendant's Fifth Amendment privilege against self-incrimination may be threatened. *Id.*

In this matter, the testimony shows that Jamil was in custody when law enforcement officers seized him. *See, e.g., United States v. Mauvais*, 948 F. Supp. 492, 494 (D.V.I. 1996) ("Absent a formal arrest, a suspect is in 'custody' when the government has in some meaningful manner imposed a significant restraint on a suspect's freedom of action.") (citing *Yount v. Patton*, 710 F.2d 956, 961 (3d Cir. 1983)); *see also United States v. May*, 87 Fed. Appx. 223, 227 (3d Cir. 2003) ("In determining whether a person is in custody, the ultimate inquiry is simply whether there is a formal arrest or restraint on freedom of movement of the degree associated with a formal arrest.") (internal quotations omitted) (citing *California v. Beheler*, 463 U.S. 1121, 1125 (1983)). Because Jamil was in custody and had not been read his *Miranda* rights when law enforcement officers asked him whether he had a license to possess a firearm, his answer to that question must be suppressed. *See, e.g., United States v. Orejuela*, Crim. No. 07-38, 2007 U.S. Dist. LEXIS 69716, at *15 (D. Del. Sept. 20, 2007) (suppressing responses to pre-*Miranda* questions where the defendant was subject to custodial interrogation).

For the reasons stated above and more fully stated on the record at the hearing on Jamil's motion to suppress, it is hereby

ORDERED that the motion to suppress as it relates to the firearm and ammunition as well as statements Jamil made after he was read his *Miranda* rights is **DENIED**; and it is further

ORDERED that the motion to suppress as it relates to Jamil's answer to the question by law enforcement officers about whether he had a license to possess a firearm is **GRANTED**.

Dated: March 12, 2008

S_____
CURTIS V. GÓMEZ
Chief Judge

Copy: Ishmael A. Meyers, Jr., AUSA
Francis E. Jackson, Jr., Esq.